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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 471, 473

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE AND VAL J. WASHINGTON, COMMISSIONERS OF THE ILLINOIS COMMERCE COMMISSION, AND DANIEL F. RICE & COMPANY, A PARTNERSHIP,

Petitioners,

VS.

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONERS, DANIEL F. RICE & CO., A PARTNERSHIP

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Petitioners.

January 6, 1947.

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OPINION BELOW

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported in 156 Federal 2nd, page 33.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Seventh Circuit sought to be reviewed was entered on June 7, 1946. (R. 262) Petition for Writ of Certiorari was filed September 6, 1946, and was granted October 21, 1946. The jurisdiction of this court is invoked under Section 240 of the Judicial Code of the United States, as amended. (Tit. 28 U.S.C., Sec. 347) The validity of Section 194b of the

Illinois Grain Warehouse Act (*Ill. Rev. Stat.* 1945, Ch. 114, Sec. 194b) is attacked on the ground of alleged repugnance to a federal statute.

The federal statute involved is the Commodity Exchange Act (Tit. 7 U.S.C., Sec. 1 et seq.), set forth in the Appendix (*infra* p. 31). Only Sections 5, 5a, 5b, 6, 6a, 6b, 7 and 12 deal directly with boards of trade.

STATEMENT OF THE CASE

On July 28, 1944, Daniel F. Rice & Co.[1] a grain commission merchant, on behalf of its customers as farmers, grain dealers and processors, filed a complaint with the Illinois Commerce Commission[2] against public grain warehousemen in the Chicago terminal area, and against the Board of Trade of the City of Chicago.[3]

The Rice complaint charged these warehousemen with maintaining excessive, unreasonable and discriminatory rates and practices, with operating inadequate and unsafe facilities and service, with abandoning public service at will, and with numerous violations of specific state statutory provisions and state constitutional requirements.[4]

The board was joined as a defendant to the end that the improvement sought in warehousing practices could be in part achieved through board rules and regulations (R. 10-19)

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[1]An Illinois partnership, hereinafter referred to as "Rice".

[2]An administrative board established under the Illinois Public Utilities Act with comprehensive regulatory powers over public utilities. Hereinafter referred to as "Illinois Commission".

[3]Hereinafter referred to as "board".

[4]An injunction against the Illinois Commission was sought in a separate proceeding by some of the defendant warehousemen. Review of the Circuit Court of Appeals' judgment in that companion case has been granted in No. 470, 472, October Term, 1946, *Illinois Commerce Commission, et al.*, v. *Great Lakes Elevator Corporation, et al.*

The Rice complaint makes the following allegations with respect to the board:

> "15. The Chicago Board of Trade has formulated and adopted Rules and Regulations governing its maintenance as a commercial grain exchange. Those rules and regulations should be such as to promote the principles of justice and equity in the purchase, sale and delivery of grain in the Chicago terminal market. In fact, however, the Rules and Regulations adopted by the Chicago Board of Trade are uncertain, incomplete and ambiguous in their coverage, favor warehousemen and the sellers of grain, and discriminate against grain buyers, and in many other respects are unreasonable and unsatisfactory.
>
> "16. The Chicago Board of Trade has from time to time during the last ten years adopted new rules and regulations, and amended existing rules and regulations, relating to the warehousing of grain in public warehouses and the custody of grain in private warehouses, without securing the approval of the Illinois Commerce Commission before placing said new or amended rules and regulations in effect. Such action constitutes a violation of Section 194b of the Illinois Grain Warehouse Act."

Relief against the board is sought as follows:

> "Declare inoperative and void such rules and regulations of the Chicago Board of Trade, or amendments thereto, which have not received prior approval of the Illinois Commerce Commission, and further require said Chicago Board of Trade to adopt and submit for approval, rules and regulations which are fair, equitable, adequate and specific."

A motion to dismiss the proceeding was filed with and denied by the Illinois Commission, and the cause set for hearing commencing October 24, 1944. (R. 20-4) Thereupon, the board filed a bill in the District Court of the United States to enjoin members of the commission and Rice from further prosecuting the proceeding before the commission. The injunction was sought on the ground that the federal

government, by the Commodity Exchange Act (Tit. 7 U.S. C., Sec. 1 *et seq.*), has "fully and completely occupied and preempted the field of regulation of boards of trade", and thereby superseded and nullified the Constitution and all laws of Illinois or regulations of the Illinois Commission with respect to the operation of the board. (R. 6, 7) Motions to strike the complaint and dismiss the proceeding were filed by the Attorney General of Illinois and by Rice. (R. 212-20) Such motions were allowed, and an order was entered by the District Court on June 26, 1945, dismissing the complaint. (R. 223-5)

Appeals were taken to the Circuit Court of Appeals for the Seventh Circuit, and on June 7, 1946, that court reversed the District Court with directions to overrule the motions to strike the complaint. (R. 261)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the Seventh Circuit erred:

1. In holding that the state requirement of prior state commission approval of rules and regulations of the board which relate to the warehousing or custody of grain and the use of custodian receipts, is in irreconcilable conflict with the limited and circumscribed control of boards of trade provided by the Commodity Exchange Act.

2. In holding that by the Commodity Exchange Act, Congress intended and expressly provided for exclusive federal control and authority over the board.

3. In holding that Congress, by the Commodity Exchange Act, has invaded the precise field occupied by the Illinois Commission by reason of Section 194b of the Illinois Grain Warehouse Act, and has rendered that state authority inoperative.

4. In reversing the order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

ARGUMENT

I

THE ONLY STATE AUTHORITY HERE INVOLVED IS THE POWER TO DISAPPROVE BOARD RULES RELATING TO THE WAREHOUSING AND CUSTODY OF GRAIN AND THE USE OF CUSTODIAN RECEIPTS. NO CLAIM OF GENERAL REGULATORY JURISDICTION OVER THE BOARD HAS BEEN ASSERTED.

The board was organized as a commodity exchange under a special legislative act of the Illinois General Assembly in 1859. (R. 28-30) It provides an establishment where actual grain is bought and sold, and where trading in grain futures contracts is conducted. Under the Commodity Exchange Act, futures trading can be conducted only at an exchange which has been designated as a "contract market". The Secretary of Agriculture[5], the administrator of the Commodity Exchange Act, has designated the board as a contract market. Under the federal act, contract markets must meet certain minimal conditions of trade and comply with specified legislative requirements which will hereinafter be discussed.

Trading in futures consists of making contracts for the purchase or sale of grain for delivery at a future date called the delivery month. Most futures contracts are liquidated before the delivery month by offsetting futures trades, but a very small number are settled by delivering to the purchaser during the delivery month the grain called for by his futures contract: *Board of Trade* v. *Olsen*, 262 U.S. 1, 11, 36 (1923). Such delivery is made by tendering warehouse receipts issued by public warehouses "declared regular" by the board. (Rule 281; R. 96) Warehouses to be declared regular must comply with conditions prescribed

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[5]Hereinafter sometimes referred to as "secretary."

by regulations of the board. (Rules 281, 1620-36; R. 96, 155-9) In addition to public warehouses, there are many private warehouses in the Chicago area which do not normally store grain for others. The board has established a custodian department which supervises the storage of grain in, and regularizes the issuance of receipts by such private warehouses—called custodian receipts. (Rules 1230-42; R. 139-43)

The board has promulgated rules affecting warehouses. These rules bear upon the warehousing practices which are in issue before the Illinois Commission. For example:

Rule 1620 fixes maximum elevation and storage charges. (R.155) Rice, in his action against the warehousemen, asked the Illinois Commission to fix reasonable and non-discriminatory rates.

Rule 1626 requires warehouses to provide modern improvements and appliances. (R. 156) Rice sought to have the Illinois Commission fix and prescribe safe and adequate warehousing facilities and service.

Rule 1636 covers the release of transit billings by warehousemen to receipt holders. (R. 158) In the warehouse suit Rice charged that warehousemen are trafficking in transit billing, and discriminating against public receipt holders by retaining the more favorable transit billing for their own use.

Rule 1621A requires parent corporations to guarantee a subsidiary's warehouse receipts. (R. 155) An affiliate transaction is involved which may definitely affect the financial soundness of a utility enterprise. The Illinois Commission is granted specific authority over such affiliate transactions, and Rice invoked that authority.

Finally, rules 1230 through 1242 provide for the custody of grain in private warehouses and establish the board's

custodian department. (R. 139-43) These latter regulations were submitted to and approved by the Illinois Commission in 1933 as a means of securing commission authorization to designate the board's weighmaster as a state official so that he might act as registrar of custodian receipts.[4] This arrangement was sought by the board in order to make such receipts eligible for rediscount under Federal Reserve Board requirements. The Illinois Commission approved the arrangement. An employee of the board is acting in the capacity of a state official, yet paradoxically the board, while accepting this advantage denies the exercise of any authority by the state or the Illinois Commission, including the authority to approve the very rules that established the board's custodian system.

The above rules, illustrative of the board's activities affecting warehouses, as we will later demonstrate, are in no respect subject to the approval or control of the federal agency acting under the Commodity Exchange Act, nor is the adoption of such rules in any way required or restricted by that act.

The Illinois Commission, a state public utility regulatory body, with express jurisdiction over public grain warehouses, has been delegated specific authority to approve or disapprove board rules relating to the public warehousing or private custody of grain and the use of custodian receipts. Such authority is contained in Section 194b of the Illinois Grain Warehouse Act[5], as follows:

> "No rule or regulation of any board of trade or grain exchange which relates to the warehousing of grain in any public grain warehouse, or which relates to the custody of grain in any private warehouse, or the use or negotiation of custodian's receipts for such grain,

[4] In the matter of Board of Trade, Ill. C. C. Doc. 22440 and 22441 (1934).

[5] *Ill. Rev. Stat.* 1945, Ch. 114, Sec. 194b.

> shall be or become operative until such rule or regulation is approved by the Illinois Commerce Commission, and the Illinois Commerce Commission may adopt and promulgate reasonable rules and regulations consistent with the provisions of this Act for the purpose of making this Act effective."

The state regulatory authority thus created is extremely narrow in scope. No attempt is made to regulate boards of trade as such. Nor is authority conferred to pass upon *all* board rules, but *only those relating to warehousing and custody of grain, and the use of custodian receipts.* Furthermore, the Illinois Commission cannot initiate or prescribe a rule, but may only approve or disapprove rules prepared and submitted by the board. The only purpose of Section 194b is to make more effective the Illinois Commission's comprehensive regulation of public grain warehousemen.

The relief sought in the Rice complaint is to have "such rules" which relate to warehousing and custody of grain, and the use of custodian receipts declared inoperative unless submitted to and approved by the Illinois Commission. Counsel for the board misconceives the issues involved by arguing that Rice has asked the Illinois Commission to assume jurisdiction over rules of the board "covering its maintenance as a commercial grain exchange". (Ans. to Pet. for Writ of Cert. p. 2) The Illinois Commission does not have such authority. Nowhere is such authority claimed.

The only issue presented to this court is whether the Commodity Exchange Act has superseded the narrow state requirement under Section 194b with respect to board rules relating to warehousing and custody of grain, and the use of custodian receipts. Respondent's bill for injunction seeks to restrain the enforcement of state laws, "especially the provision of Section 194b". (R. 9) The District Court

and the Circuit Court of Appeals dealt solely with the question of supersedure of Section 194b. (R. 224, 260) The Illinois Commission is powerless to exercise regulatory authority beyond what is expressly delegated in Section 194b. The court will not presume that a state body will usurp authority.

II

FEDERAL NULLIFICATION OF STATE AUTHORITY RESULTS ONLY WHERE THERE IS A PRECISE COINCIDENCE OF REGULATION, OR AN IRRECONCILABLE CONFLICT IS CLEARLY DEMONSTRATED.

We have discussed the principles established by this court in supersedure cases in Section I of our brief in the companion warehouse case,[8] and shall not here repeat that argument or the decisions cited.

This court has repeatedly held that an intent by Congress to supersede and invalidate the exercise of the state's police power must be clearly manifested and will never be presumed or implied. In determining whether the federal act supersedes an otherwise valid exercise of state powers, this court has required that there be a precise coincidence of federal and state regulatory control, or in the absence of federal authority over the precise subject matter, then state authority will be superseded by federal action only if there exists a repugnance or conflict between the two acts so "direct and positive" that they cannot be "reconciled or consistently stand together." Congress may regulate in the general field and may circumscribe its authority and occupy only a limited portion of that field. In that event the states are free to regulate outside the limited field subject to federal authority.

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[8] *Illinois Commerce Commission v. Great Lakes Elevator Corporation*, Docket No. 470, 472, October Term, 1946, pp. 12-26.

When supersedure is the issue, the court seeks to harmonize and reconcile the two systems and will invalidate state authority only when it is demonstrated that an actual —not a speculative or fanciful—conflict with federal action exists.

III

CONGRESS HAS LIMITED AND CIRCUMSCRIBED ITS CONTROL OVER BOARDS OF TRADE. THE INVOKED ILLINOIS REGULATION HAS NOT BEEN SUPERSEDED OR INVALIDATED.

A. The Commodity Exchange Act is of limited scope.

Counsel for respondent has urged that the Commodity Exchange Act fully, completely and exclusively regulates the board and preempts and excludes any state control.

The Circuit Court of Appeals, as a basis for decreeing nullification of state regulation, held (R. 259):

> "The Board of Trade relies upon the Commodity Exchange Act (§§ 1-17 (a), Title 7 U.S.C.A.) as conferring upon the Secretary of Agriculture exclusive jurisdiction of all regulatory authority over it and similar instrumentalities. The provisions of the Act as well as the rules and regulations promulgated under the authority contained therein are lengthy and we think it is not necessary to set them forth or discuss them in detail. It is sufficient to state that we have given them careful consideration and think that Congress *intended and expressly provided for exclusive federal control and authority over the agencies to which the Act is applicable, including the Board of Trade.*"[9]

This holding, we submit, is erroneous, as demonstrated by a reading of the federal act, and is directly in conflict

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[9]Italics in quotations throughout this brief have been supplied for emphasis.

with this court's decision in *Dickson* v. *Uhlmann Grain Co.*, 288 U.S. 188 (1933). That case involved a suit by a futures broker against a customer for commissions and advances resulting from the purchase and sale of grain futures contracts on the Chicago, Minneapolis and Winnipeg exchanges.

The transactions between the customer and the broker were conducted within the state of Missouri. In defense it was urged that grain futures trading of the type involved was declared illegal by Missouri law. The broker denied that the transactions were fictitious or gambling, and hence illegal under state law, and further argued that the Grain Futures Act (which was later amended and became the Commodity Exchange Act) exclusively occupied the field and therefore superseded the state law invoked. The court stated the broker's contention on this latter issue as follows (p. 192):

> "That The Grain Futures Act superseded all relevant state laws relating to the subject of dealings in futures on 'contract markets,' and that the transactions in question, being valid under the federal Act, were necessarily valid under the laws of Missouri."

The validity of state regulation was upheld by a unanimous court.[10] Mr. Justice Brandeis rendered the opinion and pointed out that the parties had complied with the requirements of federal law with respect to futures trading; that two contracts were involved, one between the broker and his customer, executed in Missouri, and the other between brokers on the Chicago or other exchanges; that "There is no suggestion that these contracts violated the laws of the place where the exchange was situated" (p. 193); but that in view of the Missouri law, which had not been superseded, the contract executed in Missouri

[10]Three justices dissented on another ground, but expressly agreed with the majority on the question of supersedure (p. 206).

was not enforceable. On the question of supersedure, the court held (pp. 198-200):

> "The Grain Futures Act did not supersede any applicable provisions of Missouri law making gambling in grain futures illegal. * * *
>
> "The Federal Act declares that contracts for the future delivery of grain shall be unlawful unless the prescribed conditions are complied with. It does not provide that if these conditions have been complied with the contracts, or the transactions out of which they arose, shall be valid. It does not purport to validate any dealings. *Nor is there any basis for the contention that Congress occupied the field in respect to contracts for future delivery; and that necessarily all State legislation in any way dealing with that subject is superseded.* The purpose of the Grain Futures Act was to control the evils of manipulation of prices in grain. Such manipulation, Congress found, was effected through dealings in grain futures. See Board of Trade v. Olsen, 262 U.S. 1, 32. Many persons had advocated, as a remedy, that all future trading be abolished. Congress took a less extreme position. It set up a system of regulation and prohibited all future trading which did not comply with the regulations prescribed. But it evinced no intention to authorize all future trading if its regulations were complied with. Both the language of the Act and its purpose are clear; and they indicate the contrary. The Missouri law is in no way inconsistent with the provision of the Federal Act. It does not purport to legalize transactions which the Federal Act has made illegal. It does not prescribe regulations for exchanges. Obviously, manipulation of prices will not be made easier, or the prevention of such manipulation be made more difficult, because the State has declared that certain dealings in futures are illegal and has forbidden the maintenance within its borders of places where they are carried on. Since there is nothing in the state law which is inconsistent with, or could conceivably inter-

> fere with the operation or enforcement of, the federal law, the statute of Missouri was not superseded."

It is thus evident that federal legislation provides only a limited form of control and imposes specific minimum requirements as a condition to legalized futures trading. Such a statute makes obvious the congressional purpose to preserve the additional protection afforded by the exercise of state functions in furtherance of the public interest. State regulation which legalized transactions declared unlawful by the federal act would be superseded since then only would an inconsistency occur.

Another case which holds that the federal statute is not comprehensive in scope and does not provide for general regulation of boards of trade is *State* v. *Christopher*, 318 Mo. 225, 2 S.W. (2d) 621 (1928) (cited with approval in the *Dickson* case). In determining whether a state statute was superseded, the Missouri court said (p. 628 of 2 S.W. (2d)):

> Congress "carefully, studiously, chose the ground where the disturbance of interstate commerce [evils of speculation and gambling in grain futures] was *proved*, and where its action might prevent that disturbance. *There was no general regulation* or attempted regulation of the trade which might affect interstate commerce. *Specific features incidental to future trading are carefully selected and enumerated.*"

It is clear that Congress did not provide complete and exclusive regulatory control over boards of trade. Care and diligence was exercised to impose only specific requirements and specific prohibitions to accomplish a restricted and limited regulatory purpose. State control outside the limited field occupied is clearly permissive.

The amendments that were made to the Grain Futures Act in 1936 and the accompanying change of title to Com-

modity Exchange Act did not broaden the federal legislation into a comprehensive or exclusive regulatory system. The amendments remedied defects in control that were unearthed during the previous twelve years of experience.[11] No broad change in purpose, objective or scope of the act is discernible. The present Commodity Exchange Act effects control by prohibiting all futures trading except where executed through registered futures commission merchants and brokers trading on boards of trade designated as contract markets by the secretary.

In addition, specific manipulative devices and fraudulent practices that have led to excess speculation are prohibited. For example, daily trading limits and net speculative positions may be prescribed (Sec. 4a); fraud and false reports are prohibited (Sec. 4b); wash sales, cross trades and other fictitious sales are declared unlawful (Sec. 4c); customers' funds must be segregated (Sec. 4d).

A board of trade may be designated as a contract market where futures trading is permitted when the following conditions exist:

a) A sufficient volume of cash transactions occurs to reflect the general value of the commodity. (Sec. 5(a))

b) Records are maintained and reports filed of the totals of cash and futures transactions. (Sec. 5(b))

c) The governing board prevents the dissemination of false reports and the manipulation of prices. (Secs. 5(c) and 5 (d))

d) The governing board assures membership to cooprative associations. (Sec. 5(e))

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[11]1935 Annual Report of the Chief of the Grain Futures Administration to the Secretary of Agriculture, p. 7.

Designated contract markets must then meet the following few requirements:

a) "Furnish" the secretary with copies of all rules and regulations and changes therein. (Sec. 5a(1))

b) Allow the inspection of its books by the secretary. (Sec. 5a(2))

c) Require regular warehousemen to make reports, keep records and allow "visitation" by the secretary. (Sec. 5a(3))

d) Provide for a delivery period and delivery notice on futures contracts. (Sec. 5a(4), 5a(5))

e) Require that delivery of commodities on futures contracts conform to United States standards. (Sec. 5a(6))

f) Require that receipts of federally licensed warehouses be accepted as delivery on futures contracts "made on or subject to the rules of such contract market, without discrimination * * *", and notwithstanding no state license is possessed, provided the warehouse meets reasonable requirements as to accessibility and suitability for delivery purposes. (Sec. 5a(7))

The above summary presents the totality of federal control exercised through the Commodity Exchange Act. Clearly the statute is restricted and limited, rather than comprehensive in scope. The act does not even completely regulate the field of futures trading, which is its primary objective. The secretary cannot impose or regulate margin requirements, limit the daily price fluctuations in the market, order a settlement of outstanding futures contracts in the event of a market squeeze or corner, impose trading rules either of futures or cash grain, or regulate brokerage and clearing commissions. The board has promulgated many rules dealing with these subjects, and such rules, even though directly affecting futures trading, are immune from

federal control,[12] and we may add, are also immune from state control. The state has not asserted regulatory authority over this type of board rule, nor has the state sought to prescribe regulations for boards of trade.

Congress intended to occupy only a limited portion of the field of regulation of boards of trade. State regulation effected by Section 194b of the Illinois Grain Warehouse Act lies outside that limited field and is therefore not forbidden or displaced.

B. Co-existing state regulation has been expressly recognized and sanctioned by the federal act.

The position taken by the court below that "Congress intended and expressly provided for exclusive federal control" (R. 259) is refuted not only by the limited provisions of the federal act, but also by express provisions of the statute which manifest a congressional intent to preserve state control. In Section 12 of the Commodity Exchange Act it is provided that:

> "The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, * * * or political subdivision thereof, * * *."

Congress thus recognized the existence of state authority in this field partially covered by federal enactment, and authorized the secretary to draw assistance from and lend assistance to any state authority in furtherance of the congressional purpose. As this court recently said in *Union Brokerage Co.* v. *Jensen*, 322 U.S. 202, 209 (1944):

> "Where the government has provided for collaboration the courts should not find conflict."

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[12]Rules 210-6, 1822A—Margin requirements (R. 74-5, 179); Rule 1823A—Limits on daily price fluctuations (R. 179-80); Rules 251, 1852, 1854-6—Settlements and defaults (R. 65, 186-91); Rules 251-9, 350-5—Trading rules (R. 91-3, 116-7); Rules 220-41—Brokerage commissions (R. 76-90).

If state regulation had been wholly excluded, there would be no occasion for cooperation. The court has repeatedly emphasized the significance that attaches to federal provisions calling for cooperation with state officials. In *Townsend* v. *Yeomans*, 301 U.S. 441 (1937), a Georgia statute fixing rates of tobacco warehousemen was upheld against claimed supersession by the broad federal Tobacco Inspection Act. The federal act provided that the secretary "may cooperate with * * * any State * * * or political subdivision thereof". (7 U.S.C, Sec. 511m) The court said (p. 454):

> "Instead of frustrating the operation of such state laws, the provisions of the Act expressly afforded and emphasized the opportunity for cooperation with the States in protecting the farmers' interests. In this view we find no ground for the contention that Congress has taken possession of the field of regulation to the exclusion of state laws which do not conflict with its own requirements."

Another provision of the federal act is pertinent in this regard. At the conclusion of Section 4c of the Commodity Exchange Act, the following proviso occurs:

> "Nothing in this section or section 4b shall be construed to impair any State law applicable to any transaction enumerated or described in such sections."

The involved federal sections prohibit fraud, deceit, the making of false reports, the execution of wash sales, cross trades and other fictitious sales, and the trading in privileges.

As to these specific subjects of federal regulation, Congress authorized state control even though in actual conflict with federal provisions. Congress thus permitted the exercise of state authority even over matters and transactions specifically prohibited by Congress.[11]

[11] H. Rept. No. 421 to 74th Cong., 1st Sess. on H. R. 6772, page 5.

Respondent in the court below took the position that because of these two express reservations of state authority, an implication exists that all other state regulation has been superseded. Such reasoning overlooks the fact that Section 4c preserves state control even where there is direct overlapping and conflict. Transactions of the type covered by the federal act are declared unlawful by many states. Since the specific subject matter is covered by both state and federal authority, inevitable conflict and consequent supersedure would result in the absence of a provision expressly preserving state control. But no such provision is necessary to preserve state power when no conflict exists, and therefore Congress made none. Congress used great care to preserve state authority even when in conflict, and thus made it obvious that non-conflicting state authority was intended to be left undisturbed.

It is a significant indication of the congressional intent that in the Commodity Exchange Act the states are referred to only twice. In one reference Congress guards against supersedure of state law as to specific subjects covered by federal law (Sec. 4c), and in the other authorizes cooperation with existing state authority. (Sec. 12)

Of pertinence in connection with the claimed supersedure of state regulation is the fact that the respondent board has on numerous occasions recognized the jurisdiction of the Illinois Commission. In paragraph 3 of respondent's motion to dismiss, filed with the Illinois Commission on August 31, 1944, it is alleged (R. 21):

> "While this defendant has always complied with Section 194b of the Illinois Grain Warehouse Act • • • and has always complied in all respects with the laws of the State of Illinois and the orders of this Commission, nevertheless this action requires this defendant to assert, as it here asserts, that said Commodity Exchange Act" supersedes and nullifies the constitution and all laws of Illinois dealing with the board.

In other words, when state regulation was an advantage in the past, the board acquiesced and even applied to the Illinois Commission for authorizations; but when confronted with a request for regulation and revision of alleged inequitable and unreasonable warehousing practices, the board suddenly discovers that state control is invalid and has been superseded. Furthermore, it has not been alleged that the exercise of this state authority in the past has resulted in any conflict with federal law or requirements.

C. The invoked state authority validly controls a specific subject matter of regulation not occupied by or repugnant to federal statutes.

Respondent has not urged that the secretary has authority to pass upon, approve or disapprove board rules and regulations relating to warehousing, for indeed no such statutory authority exists. The Circuit Court of Appeals, however, went far beyond respondent's position and erroneously held (R. 261):

> "We therefore are of the view that Congress has invaded the *precise field* occupied by the Illinois commission by reason of § 194(b) of the Illinois Grain Warehouse Act and has rendered its authority inoperative."

The court misconceived and misconstrued the provisions, scope and character of the Commodity Exchange Act.

1. *References to warehouses in the federal act.*

The federal act refers to warehouses in only two instances, and then only warehouses declared "regular" as facilities from which delivery on futures contracts may be made. The references to such warehouses in the federal act are:

Section 5a(3), which reads in part:

> "Each contract market shall—
>
> • • • •
>
> "(3) require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Secretary of Agriculture may prescribe. • • •"

This provision obviously is intended to afford the secretary information about "regular" warehouses in furtherance of his supervision of futures trading. It imposes no operating requirements upon such warehouses, aside from the keeping of records and reports, presumably of deliveries on futures contracts and grain stored pursuant thereto.

No issue raised by the Rice complaint has even a remote connection with or raises the slightest question about the keeping of records, the making of reports or allowing the secretary to visit a warehouse. We seek the correction of board rules which are alleged to be "uncertain, incomplete and ambiguous in their coverage, favor warehousemen and the sellers of grain, and discriminate against grain buyers • • •." (R. 18)

Under the state act a board rule dealing with warehouse reports and records would relate to warehousing and therefore would have to be submitted to the Illinois Commission for approval. It is inconceivable that the commission would disapprove any reasonable rule which sought to fulfill the federal requirement. The possibility of such disapproval is far-fetched and improbable, but in any event would be subject to state judicial review and unquestioned judicial condemnation. Actually, even though the board has operated under Section 5a(3) for the last ten years, compliance

with the federal act has been achieved without specific rules requiring warehouse reports to be made and records to be kept. No occasion for the exercise of state authority has arisen.

Section 5a(7) contains the second reference to warehouses. It provides that:

> "Each contract market shall—
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> • • • •
>
> "(7) require that receipts issued under the United States Warehouse Act shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes."

This section has as its sole purpose the prevention of discriminations by contract markets against warehouses which possess only federal licenses.[14] These warehouses are given the same status, for future deliveries, as the state licensed warehouses, but both federal and state houses continue to be subject to all rules of the board and to all applicable laws, as long as such rules and laws are applied "without discrimination". The board itself has adopted rule 1623,

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[14] 80 Cong. Rec. 6834, 74th Cong., 2nd Sess., April 4, 1936.

which fully accords with our position.[15] That regulation provides (R. 156):

> "Any regular warehouse may be declared to be irregular by the Board at any time for violation of the laws of Illinois or the Rules or Regulations of the Association."

The two limited references to warehouses in the Commodity Exchange Act bear out the fact that the federal act is primarily, if not entirely concerned with futures trading, and not warehouse regulation. The federal act touches upon warehouses only incidentally, and does not deal with the subject matter of state control invoked by the Rice complaint. We have sought the establishment of reasonable warehouse rates, the elimination of discriminatory rates and practices, the provision of safe and adequate warehousing service and facilities, and the maintenance of sound financial arrangements by warehousemen. If the board adopted regulations dealing with warehouse rates and service—as it has from time to time—there would be no federal provision in any way bearing upon, restricting or influencing such regulations. Submission of such regulations to the Illinois Commission for approval would constitute the only existing regulatory force over the board.

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[15]Counsel for the board, in testimony before the Senate Committee on Agriculture and Forestry, when Section 5a(7) was proposed as an amendment to the federal act, said in answer to a question by Senator Norris (Hearings on H.R. 6772, 74th Cong., 2nd Sess., April 21-3, 1936, pp. 102, 104):

> "• • • the amendment proposed by the Secretary [which became Section 5a(7)] does not provide that Congress has occupied the field. It only provides that Federal warehouses, the receipts from Federal warehouses, may be used in settlement of grain contracts.
>
> • • • •
>
> "This proposal of the Secretary merely provides that boards of trade legalize receipts from warehouses having solely a Federal license. There is no intent in this act to preempt Federal regulation and exclude State regulation."

Furthermore, the warehouses referred to in Sections 5a(3) and 5a(7) are warehouses that are declared "regular" for delivery of grain on futures contracts. There are other types of warehouses and warehousing functions which are no part of the futures delivery mechanism, and for which the board has adopted regulations, such as:

a) Warehousing of public grain in houses that *have not been designated as regular* for delivery of grain in satisfaction of futures contracts.

b) Custody of grain in *private* warehouses, and control of custodian receipts.

c) Warehousing of actual grain which is not used in connection with futures trading or deliveries on futures contracts.

d) The rates and practices under which actual grain is stored and handled by warehousemen.

Certainly, state supervision is unimpeded as to rules dealing with such warehouses and functions, or with regular warehouses on matters other than those specifically covered by the narrow requirements of Sections 5a(3) and 5a(7). No encroachment upon federal control is involved, since no federal control can be exercised.

2. *References to board rules in the federal act.*

The specific federal requirements and conditions imposed upon the board in its capacity as a contract market may very well necessitate the adoption of rules to evidence compliance therewith. In many, but not all instances, the board has adopted such rules. Evidence of compliance by the board has been supplied largely by a general rule requiring all members to comply with the lawful provisions of the Commodity Exchange Act. (Rules 603, 1828; R. 118, 180) The federal requirements, however, relate largely to futures trading, and not to warehousing, except in the two respects discussed above. Thus, the federal act requires the board

to provide a delivery period and delivery notice in the contract month covering the satisfaction of futures contracts when directed by the secretary (Secs. 5a(4) and 5a(5)); that futures contracts shall be settled by the delivery of commodities conforming to United States grade standards (Sec. 5a(6)); for the filing by members of reports of all cash and futures transactions (Sec. 5(b)); for the prevention of manipulation and corners and the dissemination of false rumors (Secs. 5(c) and 5(d)). These requirements, as we pointed out, deal entirely with phases of futures trading and not with warehousing. They have no bearing upon the issue of state regulation here involved.

The specific references by the Commodity Exchange Act to rules of boards of trade in no way impede the full exercise of state authority over rules relating to warehousing.

Section 5a(1) requires each contract market to "furnish" the secretary with copies of all rules and changes therein. It will be observed that this provision does not grant the secretary the power to approve or disapprove, prescribe or in any way revise such rules. Neither does the provision contain any requirement with respect to the contents of a rule adopted. It has not been urged by respondent that this section gives the secretary the power to approve or disapprove board rules, yet that is the function with respect to warehousing rules which the Illinois Commission is being asked to perform.

The federal provision is vastly different from the requirement under state law that certain rules receive the approval of the Illinois Commission before they may become effective. The state commission is thus authorized to exercise affirmative regulatory control in furtherance of the public interest.

Section 5a(1) requires rules to be furnished the secretary solely for informational purposes, so that the secre-

tary may keep advised of existing rules to assure himself that there are no violations of the specific and limited requirements of the federal act. This section cannot in itself be the source of any conflict with state authority. If conflict exists it would only be the result of specific federal requirements imposed by other section of the act. In this regard there are only two narrow requirements dealing with warehousemen which have been imposed by Sections 5a(3) and 5a(7) of the federal act.

Sections 5(e) and 6a(2) deal with a phase of the federal requirement that boards of trade shall not exclude cooperative associations from membership. These sections provide that no rule of a contract market shall forbid the return of patronage dividends or the payment of commodity-unit compensation to cooperative members. We wish to emphasize that only with respect to these provisions dealing with cooperative associations is there any prohibition imposed by statute upon the contents of the board's rules. The subject of cooperatives or the handling of earnings of cooperatives has no relationship to our instant problem. This subject does not lie within the area of state regulation invoked and could not possibly result in conflict with the state requirement that rules relating to warehousing receive Illinois Commission approval.

Respondent has urged that these requirements with respect to the board's rules necessarily supersede state authority, since in *Board of Trade* v. *Wallace*, 67 F. (2d) 402 (C.C.A. 7th 1933) the board was suspended for sixty days by reason of a rule it had in effect. That case merely serves to illustrate the precise point we are here urging. The court in the *Wallace* case had under consideration a board rule which served to deny membership to a cooperative association. Here, then, was a rule which directly violated the only prohibition imposed upon such rules by

the federal act. Under such circumstances, enforcement of the act necessitated suspension until the rule was revised. The point we wish to make is that outside of the specific requirements or specific prohibition of the Commodity Exchange Act, the board is completely free to adopt any rule it sees fit, as long as a copy is furnished to the secretary.

The board rule dealing with cooperatives, as well as other board rules which may be adopted to meet specific federal requirements, do not bear upon the regulatory issues before the Illinois Commission, and do not relate to the warehousing and custody of grain, or the use of custodian receipts except for the two minor federal references to warehouses.

3. *State regulation does not impose conflict of duties upon the board.*

Respondent claims that a conflict exists between Section 194b of the Illinois Grain Warehouse Act and the Commodity Exchange Act and that compliance with state regulation would result in revocation of the board's designation as a contract market, and would subject it to federal penalties. (R. 7-8) These dangers and severities have been urged but not established. When the federal and state controls are placed side by side and analyzed, it is clear that there cannot be a demonstration of actual conflict, or danger of federal penalties, or of any impediment to the free operation of the federal act within its own orbit.

The state act requires board rules relating to warehousing and custody of grain to be submitted to the Illinois Commission for approval. The commission exercises a portion of the state's police power and its functions are limited and conditioned by the requirement that its actions be reasonable and in furtherance of the public interest. The Illinois Commission may only disapprove rules which the

board itself initiates, and then only after full hearings and a finding that the rule involved is inequitable or unreasonable in some substantial respect.

The Commodity Exchange Act seeks to promote fairness in futures trading and to eliminate excess speculation.

The board, according to the preamble to its rules, has as one of its objects "* * * to inculcate principles of justice and equity in trade". (R. 30) All three agencies thus seek the establishment of principles of justice and fairness, but in different fields.

If the board adopted a rule relating to warehousing and submitted it to the Illinois Commission and the rule was approved, the rule would then be furnished the secretary and the process ended. The board's status as a contract market would not be affected, nor would it be subject to penalties. Complete compliance with the Commodity Exchange Act would result by merely furnishing the secretary with the new rule.

But let us assume the new rule was disapproved by the Illinois Commission. Then there would be nothing to furnish the secretary and again no danger to the board and no conflict with federal control. In that event the board would unquestionably revise the rejected rule so that it would more nearly approximate a fair and reasonable provision. As has already been urged, it is highly improbable that the Illinois Commission would disapprove a reasonable rule promulgated by the board pursuant to the requirements of Sections 5a(3) or 5a(7). Should this occur, however, the ruling of the Illinois Commission would be subject to judicial review by the state courts. Even so, if conflict with the federal act was to result from such unlikely action by the Illinois Commission, the board could then claim supersedure. The attack would be against the single order of the Illinois Commission, and not against the

general regulatory authority conferred by section 194b of the Illinois statute.

If we reasonably assume that the board would not adopt a rule which would infringe its limited federal obligations, then the Illinois Commission could not pursue a course which would require the board to violate its federal duties. The Illinois Commission cannot initiate rules and impose them upon the board; it may only pass upon rules first adopted and submitted by the board.

The secretary has not been granted authority to approve or disapprove the board's warehousing rules. That regulatory function may be exercised only by the state. To the extent that state regulation improves the character, effectiveness and fairness of such rules, obviously the purpose of the Commodity Exchange Act would be furthered, no federal requirement would be infringed, no jeopardy to the board's status would result, and no conflict would exist. The federal agency cannot perform the regulatory function granted the Illinois Commission. To invalidate state authority would be to eliminate completely this form of regulation. The court cannot transfer or delegate that function to the secretary. Congress has not done so.

CONCLUSION

It is respectfully submitted that consideration of the Commodity Exchange Act reveals that state regulation has not been superseded or nullified. The only state authority here sought to be exercised is the approval or disapproval of board rules relating to warehousing and custody of grain, and the use of custodian receipts. No similar federal control exists. The board has many rules directly or indirectly related to warehousing and custody of grain. The federal act refers to warehouses in only two instances

by providing that the board require that regular warehouses keep records, file reports and allow visitation by the secretary; and by requiring that receipts of federally licensed regular warehouses be accepted without discrimination in satisfaction of delivery on futures contracts. As to all other warehousing matters, the board is completely free and clear of any federal control.

The Commodity Exchange Act is a limited and circumscribed statute which achieves only partial control of boards of trade and of futures trading. It does not expressly exclude state regulation, nor does it imply such exclusion through the establishment of a comprehensive and complete regulatory system, but instead has manifested an intent to preserve state control by expressly providing for cooperation with state agencies. State regulation involved will in no respect infringe federal policy or stand as an obstacle to the accomplishment of the purposes and objectives of Congress.

The legal principles of supersedure have been crystallized. This court has exercised a wise restraint in refusing to invalidate state legislation unless a definite federal requirement fully occupies the precise subject matter of state regulation invoked, or the state authority is repugnant and in actual rather than argued or speculative conflict with the federal system. No such factual situation exists in the instant case.

Limited federal regulation in a broad general field is not enough to nullify state authority. In the cases where supersedure has been decreed, state action has not been set aside on mere generalities, or on the basis of loose talk. It has required an actual demonstration of conflict between state and federal action. State control was not invalidated unless what the state required in the light of what Congress ordered directly entailed contradictory duties and made for

actual rather than argumentative inroads on what Congress commanded or forbade.

The order of the District Court properly denied injunctive relief, and should be sustained; and the order of the Circuit Court of Appeals for the Seventh Circuit should be reversed.

Respectively submitted,

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